

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

THE STATE OF TEXAS, et al.,

Plaintiffs,

v.

GOOGLE LLC,

Defendant.

Civil Action No. 4:20-cv-00957-SDJ

EXHIBIT 5

**PLAINTIFF STATES' OPENING BRIEF TO THE SPECIAL MASTER
FOR THE MARCH 21, 2024 HEARING**



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HIGHLY CONFIDENTIAL

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February 16, 2024

Re: *State of Texas et al. v. Google LLC*, No. 4:20-cv-957-SDJ (E.D. Tex.)

Counsel:

We write in response to your January 16 letter requesting additional source code.

As you know, Google has made available for inspection approximately 80 gigabytes of source code since July 2023. Without first meeting and conferring with Google, Plaintiffs represented to the Court on December 7, 2023 that there were gaps in the code provided, but you provided no details to Google. On January 16, 2024, you identified, for the first time, the gaps that you contend exist in Google's source code production.

At our meet and confer on February 6, we told you that we were cautiously optimistic that we would be able to make additional code available to address some, but likely not all, of Plaintiffs' requests. At our meet and confer on February 12, we told you that the approvals process for making additional code available was progressing quickly. On February 16, you filed a motion to compel with the Special Master asserting that the parties were at impasse as to source code.

Google has reviewed your belated requests for additional source code, files and directories, and experiment data files. We understand that Plaintiffs are seeking: (1) source code for the initial Bernanke implementation; (2) source code for Project Bell, including code to "execute Project Bell"; (3) additional files and directories described at pages 4-5 of your January 16 letter; and (4) what you characterize as "experiment files used by the Bernanke code."

February 16, 2024

Page 2

Google's Agreement to Provide Additional Source Code

In the interest of resolving this issue without the need for wasting more of Special Master Moran's time, Google agrees to make additional code available as described below.

Bernanke. With respect to Plaintiffs' first request (for source code for the initial Bernanke implementation), Google will make available one additional snapshot of the source code on a date of Plaintiffs' choosing. Please let us know your preferred date for the snapshot.

Files and directories. With respect to Plaintiffs' third request (for additional files and directories described at pages 4-5 of your January 16 letter), Google agrees to make available the files and directories listed in Appendix 1 to this letter which capture the vast majority of the files and directories that Plaintiffs have requested. Google will collect and make available the files and directories at the time of each source code snapshot already made available to Plaintiffs and at the time of the additional source code snapshot of Plaintiffs' choosing noted above.

In the interests of transparency, Google notes that Appendix 1 does not contain all of the files and directories that Plaintiffs requested. Specifically, Google will not produce materials for the few remaining files and directories that either do not exist and or implicate billions of lines of code not tethered to the ad tech products and features in this case.

- Plaintiffs allege that [REDACTED] references files in " [REDACTED]" have not been produced, including [REDACTED]
[REDACTED] There is no reference in [REDACTED]
[REDACTED], but Google will produce the file in [REDACTED], and is optimistic about being able to produce additional code to this request—that internal process is ongoing. The string " [REDACTED]" does not exist in Google's source code repository.
- Plaintiffs have requested all files in the [REDACTED] directories without any explanation as to how these entire directories are relevant to the source code for the ad tech products and features at issue. Google will not undertake the burdensome collection and production for all files in these directories, which include [REDACTED] of lines of code. As listed in Appendix 1 and summarized below, Google has agreed to produce certain referenced files in each directory that Plaintiffs identified in their January 16 letter following their review of Google's source code production.
 - The [REDACTED] includes more than [REDACTED] lines of code. Google will produce the files in [REDACTED]
[REDACTED] [REDACTED] [REDACTED] [REDACTED]
[REDACTED] listed on page 4 of their January 16 letter.
 - The [REDACTED] includes nearly [REDACTED] lines of code. Google will produce the files [REDACTED] [REDACTED] [REDACTED] in response to Plaintiffs' request for specific files

February 16, 2024

Page 3

([REDACTED]) listed on pages 4-5 of their January 16 letter. As noted above, Google is optimistic about being able to produce additional code from [REDACTED]. That internal process is ongoing.

- The [REDACTED] includes [REDACTED] lines of code. Google will produce the file (and the associated files) from [REDACTED]. This will capture the files from the “[REDACTED]” folder that Plaintiffs specifically requested on page 5 of their January 16 letter.
- The [REDACTED] includes almost [REDACTED] lines of code. Google will produce the [REDACTED] directory, which Plaintiffs specifically requested on page 5 of their January 16 letter.
- The [REDACTED] includes more than [REDACTED] lines of code. Google will produce the files and code in [REDACTED]. This will capture the files in “[REDACTED]” that Plaintiffs specifically requested on page 5 of their January 16 letter.

Google does not agree to produce additional materials in response to Plaintiffs' remaining belated requests for the following reasons:

Bell. With respect to Plaintiffs' second request (code for Project Bell), Plaintiffs' request is based on the misapprehension that Google "has not produced any code or documents for Project Bell." Google has reviewed the productions made to date and has determined in good faith that Plaintiffs already have access to the source code for Project Bell, including code to "execute Project Bell." Moreover, Plaintiffs' assertion that Google has not produced any documents for Project Bell is obviously wrong because Google has produced 22,948 documents that hit on the term "Bernanke" or "Project Bell".

Bernanke experiment files. Plaintiffs' request for SSTables and "experiment code files" used by the Bernanke code to "load values for various bid adjustments" is not a request for source code but is instead a request for raw underlying data files. Google has already provided the source code (including experiment code) that [REDACTED]

[REDACTED]. The files that Plaintiffs are requesting would not provide additional information regarding how Bernanke works, adjusts bids, or calculates multipliers. Google does not agree to undergo the burdensome, cumulative, and duplicative exercise of collecting historical raw data when Plaintiffs already have access to the more relevant source code.

We remain available to meet and confer.

Sincerely,

/s/ Robert J. McCallum

Robert J. McCallum

Appendix 1

1. [REDACTED]
2. [REDACTED]
3. [REDACTED]
4. [REDACTED]
5. [REDACTED]
6. [REDACTED]